

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JIMMIE L. COX, JR.,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 04-3573-CV-S-RED-H
ROBERT McFADDEN, et al.,)	
)	
Respondents.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to invoke the provisions of 28 U.S.C. § 2241 as the jurisdictional basis for collateral review of the constitutionality and legality of his current sentence. He asserts that the dismissal of this action is premature and not solidified by Supreme Court precedent at this time.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, he has failed to establish that the 28 U.S.C. § 2255 remedy is inadequate or ineffective to address his complaints, and has failed to establish that his case comes under the

“savings clause” of § 2255. Additionally, petitioner is reminded that the dismissal of his case is without prejudice to his right to seek future relief under the appropriate circumstances.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: December 20, 2005